

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-000720

10/01/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

PATRICK B YOUNG

GERALD BARRETT

v.

CORRECTIONS OFFICER RETIREMENT  
PLAN  
SUSAN SCHUERMAN  
BILL WILLIAMS  
FRANK WAELE  
ART PARKER  
WAYNE LAPOINT

BRUCE P WHITE

OFFICE OF ADMINISTRATIVE  
HEARINGS

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Petitioner to demonstrate that the hearing officer's decision was arbitrary, capricious, or involved an abuse of discretion.<sup>1</sup> The reviewing court may not substitute its own

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<sup>1</sup> *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977); *Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980); also see *Caretto v.*

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discretion for that exercised by the hearing officer,<sup>2</sup> but must only determine if there is any competent evidence to sustain the decision.<sup>3</sup>

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the administrative hearing, exhibits made of record and the memoranda submitted.

In the case at hand, Plaintiff, Patrick Young, seeks review from Defendant's decision (the Corrections Officer Retirement Plan) denying Plaintiff's application for a total and permanent disability retirement from the Corrections Officer Retirement Plan. Plaintiff worked as a corrections officer for the Arizona Department of Corrections (hereinafter the "ADC") for eighteen (18) years. In 1998, Plaintiff left the ADC to work for the Maricopa County Sheriff's Office (hereinafter the "MCSO") as a corrections officer. Several months before Plaintiff's last day of active employment with the MCSO, he was inadvertently locked in an inmate pod for approximately five (5) minutes. Plaintiff alleges that some of the inmates threatened his life. Immediately after this incident, Plaintiff alleges that he had nightmares, panic attacks and suffered from severe stress, and consequently, Plaintiff is unable to return to any type of employment. Four (4) weeks after the incident, Plaintiff sought medical attention for his symptoms. On July 31, 2000 and September 8, 2000, Plaintiff submitted applications to Defendant for total and permanent disability benefits. Defendant denied the benefits for lack of proof that the incident in the inmate pod was the direct and proximate cause of Plaintiff's panic attacks. The parties agreed to have the matter re-submitted for a *de novo* review by Defendant.

On February 6, 2002, the parties held a meeting where Plaintiff argued the merits of his case. Defendant appointed an independent medical examiner<sup>4</sup> to review Plaintiff's medical records and examine Plaintiff. The independent medical examiner, Dr. Youngjohn,<sup>5</sup> concluded that Plaintiff had problems relating to his inability to get along with his co-workers and superiors,<sup>6</sup> but Plaintiff was not "disabled" from a psychological standpoint. After receiving a copy of Dr. Youngjohn's report, Plaintiff retained Dr. Robin Ford to examine him. Dr. Ford's analysis of Plaintiff differed somewhat from that of Dr. Youngjohn. Plaintiff submitted Dr. Ford's report to Defendant and again argued his case for total and permanent disability benefits before Defendant in a meeting held on August 7, 2002. Defendant sorted through the medical

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Arizona Dept. of Transp., 192 Ariz. 297, 965 P.2d 31 (App. 1998).

<sup>2</sup> Ariz. Dept. of Economic Security v. Lidback, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

<sup>3</sup> Schade v. Arizona State Retirement System, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); Welsh v. Arizona State Board of Accountancy, 14 Ariz. App. 432, 484 P.2d 201 (1971).

<sup>4</sup> Pursuant to A.R.S. §38-886(A).

<sup>5</sup> Dr. Youngjohn is a Ph.D. psychologist who holds a diplomate in clinical neuropsychology from the American Board of Professional Psychology. Plaintiff's assertions that Dr. Youngjohn is not qualified to opine in this matter is preposterous and will not be entertained on appeal.

<sup>6</sup> Plaintiff had a medical condition that did not permit him to shave, so Plaintiff wore a beard. Beards are not allowed while working for the MCSO, so Plaintiff's co-workers and supervisors apparently resented him. Further, Plaintiff's salary was higher than that of his co-workers, allegedly creating an even deeper resentment toward Plaintiff.



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the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached."<sup>7</sup> It is clear from the record that Defendant duly considered the facts and the medical records, and ruled in a manner consistent with Arizona law. It is clear that Defendant based its decision upon the well-reasoned opinion of its expert, Dr. Youngjohn. It is also unmistakable that Plaintiff failed to prove the fundamental element of causation as required by A.R.S. §38-881(22). This court affirms the Corrections Officer Retirement Plan Local Board's decision, for it was clearly supported by Arizona law and substantial competent evidence. Only where the administrative decision is unsupported by competent evidence may the this court set it aside as being arbitrary and capricious.<sup>8</sup>

IT IS ORDERED affirming the decision of the administrative agency - the Corrections Officer Retirement Plan Local Board.

IT IS FURTHER ORDERED denying all relief as requested by the Plaintiff in his complaint.

IT IS FURTHER ORDERED that counsel for the Defendant shall lodge an order and judgment consistent with this opinion no later than November 21, 2003.

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<sup>7</sup> *Tucson Public Schools, District No. 1 of Pima County v. Green*, 17 Ariz.App. 91, 94, 495 P.2d 861, 864 (1972), as cited by *Petrus v. Arizona State Liquor Board*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App. 1981).

<sup>8</sup> *City of Tucson v. Mills*, 114 Ariz. 107, 559 P.2d 663 (App. 1976).